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| 10/009,887 | 12/11/2001 | Midoriko Kato | CU-2771 RJS | 6708 |
| 26530 | 7590 | 08/10/2005 | EXAMINER | |
| LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604 | | | HUNG, YUBIN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2625 | |

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,887

Applicant(s)

KATO ET AL.

Examiner

Yubin Hung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment/Arguments

1. This action is in response to amendment filed 05/02/2005, which has been entered.
2. A copy of Form PCT/IB/304 notifying Applicant the receipt of priority document (JP 2000-112667) by the International Bureau has been received.
3. Claims 7 and 8 have been cancelled; claims 1-6 are still pending.
4. In view of Applicant's amendment, the objections to the specification and drawings have been withdrawn.
5. In view of Applicant's amendment, the 35 USC § 112 rejections of claims 4 and 6 have been withdrawn. However, new issue with claim 6 resulting from the amendment has been found. See below.
6. In view of Applicant's cancellation, the 35 USC § 101 rejections of claims 7 and 8 have become moot.
7. Applicant's arguments filed 5/02/2005 have been fully considered but they are not persuasive; see below.

8. In remarks Applicant argued in substance:

- 8.1 *that none of the cited prior art disclose or suggest the claimed features of Applicant's invention described with reference to Figs. 9-12 (page 3, last two paragraphs through page 4, 3rd paragraph)*

However, while none of the cited art *individually* discloses or suggests all the recited limitations of claims 1-6, they in various combinations do, as the analyses and rejections of those claims (reproduced below) in the previous Office action clearly show.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Amended claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Amended claim 6 recites the limitation "coordinate grading point data" in line 17. There is insufficient antecedent basis for this limitation in the claim.

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(Note: For examination purpose “coordinate grading point data” will be interpreted as “grading data.”)

Claim Rejections – 35 USC § 103

(From Office action mailed 11/03/2004)

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galazin (US 6,000,407), Ruriko et al. (EP 0828230A2) and Macchio et al. (US 6,045,783).

14. Regarding claim 1, Galazin discloses

- classifying using a color image index chosen from among, and indicating at least one of, warm/cool, character, mind, obtained from applying color to skin
[Fig. 3, numeral 18; Col. 7, lines 19-28 and 52-53]

Galazin does not expressly disclose

- Classifying at least one or the other of either a lip color or an eye color
- classifying using a color image index chosen from among, and indicating at least one of, light/dignified, mature/immature, mature

However, Macchio teaches applying lipsticks to lips and subsequently analyzing the resultant lip images [Col. 5, lines 8-13] and Ruriko teaches classifying face images using two indices, one being the mature/neonate (i.e., immature) index [Figs. 2, 10, 12; Col. 4, line 57 – Col. 5, line 3; Col. 8, lines 53-58]

Galazin, Ruriko and Macchio are combinable because they are from the field of endeavor of feature analysis (for cosmetic applications).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Galazin with the teachings of Macchio and Ruriko by classifying lip color as well as using an additional color image index indicating mature/neonate (i.e., immature). The motivation would have been because lipsticks are one of the major cosmetic products and that the degree of maturity is an important facial trait, which is important in determining personal colors of individuals.

Therefore, it would have been obvious to combine Ruriko and Macchio with Galazin to obtain the invention of claim 1.

15. Regarding claim 2, Ruriko further discloses classifying two-dimensionally. [Figs. 10, 14.]

16. Regarding claim 3 the combined invention of Galazin, Ruriko and Macchio discloses or teaches

- an image index setting step for setting either an image index chosen from among and indicating at least one of warm/cool, character and mind or an image index chosen from among and indicating at least one of light/dignified, mature/immature and mature
[Galazin: Fig. 2, numeral 31; Col. 4, lines 47-55. Note that the index indicating warm-cool is set here]

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- a made-up face data acquisition step for acquiring made-up face data for a plurality of types of make-up material for at least one of lip color and eye color applied to a face
[Galazin: Col. 7, lines 20-22 (applying make-up to face)]
[Macchio: Col. 5, lines 8-13 (apply lipstick to lips)]
[Ruriko: Fig. 2; Col. 4, lines 53-56. Note that clearly the photographs of faces have been acquired at a separate acquisition step. Note further that Fig. 2 clearly indicates that the images are input and displayed]
- a make-up color image evaluation step, in which a plurality of test subjects evaluate a color image of the make-up material based on the made-up face data using the image index as an evaluation criteria and a make-up color image classification step for classifying the make-up material based on the obtained make-up material color image using the image index
[Ruriko: Col. 4, line 53-56 (note that there are 12 female participants, i.e., test subjects, who evaluate images)]
[Galazin: Fig. 3, numeral 18 and Col. 7, lines 28-41 teach using image index (e.g., cool/warm) to evaluate and then classify images]

17. Regarding claim 4, note that per the analysis of claim 3 above the combined invention of Galazin, Ruriko and Macchio discloses or teaches:

- an image index setting step for setting an image index chosen from among and indicating at least one of warm/cool, character and mind
- a made-up face data acquisition step for acquiring made-up face data for a plurality of types of make-up material for at least one of lip color and eye color applied to a face
- a make-up color image evaluation step, in which a plurality of test subjects evaluate a color image of the make-up material based on the made-up face data using (the warm/cool) image index as an evaluation criteria
- a make-up color image classification step for classifying the make-up material based on the obtained make-up material color image using the (warm/cool) image index

Ruriko further discloses

- setting another image index chosen from among and indicating at least one of light/dignified, mature/immature and mature
[Figs. 2, 10, 12; Col. 4, line 57 - Col. 5, line3; Col. 8, lines 53-58]
- (use the two chosen image indices) as two coordinate axes as well as an evaluation criteria, and two-dimensionally classifying the make-up material based on the obtained make-up material color image using the two image indexes as coordinate axes
[Fig. 14. Note that Fig. 14 indicates a two-dimensional classification. Note further that per the analysis of claim, Ruriko teaches using

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mature/immature as one axis while Galazin teaches using warm/cool as the other]

18. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galazin (US 6,000,407), Ruriko et al. (EP 0828230A2) and Macchio et al. (US 6,045,783) as applied to claim 1-4, and further in view of Kuroda et al. (US 6,132,743).

19. Regarding claim 5, per the analysis of claim 3, the combined invention of Galazin, Ruriko and Macchio discloses or teaches

- an image index display step for setting either an image index chosen from among and indicating at least one of warm/cool, character and mind or an image index chosen from among and indicating at least one of light/dignified, mature/immature and mature
- a made-up face data display step for inputting and displaying made-up face data for a plurality of types of make-up material for at least one of lip color and eye color applied to a face
- a make-up color image evaluation input step for evaluating a color image of the make-up material based on the made-up face data using the image index as an evaluation criteria

Galazin and Ruriko further teaches/suggests

- (that) the image index display step also input and display the chosen index
[Galazin: Col. 7, lines 8-55. Note that the chosen index (the seasonal color designation chart, corresponding to the warm/cool index, in this case) is used to help in the classification and therefore requires the index to have been input and displayed. Note further that although not expressly disclosed in Galazin, Ruriko teaches inputting and displaying on a monitor, as is shown in Fig. 2 of Ruriko.]
- a make-up color image classification data output step for statistically processing the totaled grading data and outputting results of a positioning of a plurality of types of make-up materials in relation to an image index
[Ruriko: col. 5, lines 21-31 (statistically processing evaluation result); Figs. 10, 14 (outputting positioning of the subjects being evaluated in relation to an image index)]

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The combined invention of Galazin, Ruriko and Macchio does not expressly disclose

- (that) the make-up color image evaluation input step also input grading data
- a make-up color image evaluation data totaling step for adding up grading data input by a plurality of people

However, Kuroda teaches summing grading data (i.e., marks) of all panelists to obtain the evaluation results [col. 10, lines 65-66]; summing grading data obviously requires the data to have been input.

Galazin, Ruriko, Macchio and Kuroda are combinable because they are from the field of endeavor of feature analysis (for cosmetic applications).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the combined invention of Galazin, Ruriko and Macchio with the teachings of Kuroda by inputting and totaling grading data of multiple people. The motivation would have been to obtain a more statistically sound evaluation results so as to make a better classification.

Therefore, it would have been obvious to combine Kuroda with Galazin, Ruriko and Macchio to obtain the invention of claim 5.

20. Regarding claim 6, it is similarly analyzed and rejected as per the analyses of claims 4 and 5.

Conclusion and Contact Information

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yubin Hung whose telephone number is (571) 272-7451. The examiner can normally be reached on 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yubin Hung
Patent Examiner
August 05, 2005



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